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8 **BEFORE THE**
9 **PROFESSIONAL FIDUCIARIES BUREAU**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **GARY LEE ARPS**
14 **P.O. Box 5453**
15 **Chula Vista, CA 91912**

16 **Professional Fiduciary License No. PF 315**

17 Respondent.

Case No. PF-2013-84

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about March 23, 2015, Complainant Julia Ansel, in her official capacity as the
20 Bureau Chief of the Professional Fiduciaries Bureau, Department of Consumer Affairs, filed
21 Accusation No. PF-2013-84 against Gary Lee Arps (Respondent) before the Professional
Fiduciaries Bureau. (Accusation attached as Exhibit A.)

22 2. On or about February 17, 2009, the Professional Fiduciaries Bureau (Bureau) issued
23 Professional Fiduciary License No. PF 315 to Respondent. The Professional Fiduciary License
24 was in full force and effect at all times relevant to the charges brought in Accusation No. PF-
25 2013-84 and will expire on August 31, 2015, unless renewed.

26 3. On or about March 26, 2015, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. PF-2013-84, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to California Code of
2 Regulations, title 16, section 4404, is required to be reported and maintained with the Bureau.
3 Respondent's address of record was and is: P.O. Box 5453, Chula Vista, CA 91912.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. Government Code section 11506 states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts
10 of the accusation not expressly admitted. Failure to file a notice of defense shall
11 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
12 may nevertheless grant a hearing.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. PF-
15 2013-84.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
20 respondent.

21 8. Pursuant to its authority under Government Code section 11520, the Director finds
22 Respondent is in default. The Director will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Bureau's offices regarding the allegations contained in Accusation No. PF-2013-84,
26 finds that the charges and allegations in Accusation No. PF-2013-84, are separately and severally,
27 found to be true and correct by clear and convincing evidence.

28 9. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$1,707.50 as of July 2, 2015.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Gary Lee Arps has subjected his
3 Professional Fiduciary License No. PF 315 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Professional Fiduciaries Bureau is authorized to revoke Respondent's
6 Professional Fiduciary License based upon the following violations alleged in the Accusation
7 which are supported by the evidence contained in the Default Decision Evidence Packet in this
8 case. Respondent has subjected his license to disciplinary action under sections 490 and 6584(a)
9 of the Business and Professions Code in that on or about May 8, 2014, in a criminal proceeding
10 entitled *People of the State of California v. Gary Lee Arps*, in San Diego County Superior Court,
11 case number CD248385, Respondent was convicted on his plea of guilty to violating Penal Code
12 section 288(c)(1), lewd act upon a child 14 or 15 years old, a felony.

13 ORDER

14 IT IS SO ORDERED that Professional Fiduciary License No. PF 315, heretofore issued to
15 Respondent Gary Lee Arps, is revoked.

16 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
17 written motion requesting that the Decision be vacated and stating the grounds relied on within
18 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
19 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

20 This Decision shall become effective on AUGUST 31, 2015.

21 It is so ORDERED July 31, 2015

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24 81085462.DOC
25 DOJ Matter ID:SD2015700446

26 Attachment:
27 Exhibit A: Accusation
28



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

Exhibit A

Accusation

(GARY LEE ARPS)

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Attorneys for Complainant

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9 **BEFORE THE**
PROFESSIONAL FIDUCIARIES BUREAU
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. PF-2013-84

13 **GARY LEE ARPS**
14 **P.O. Box 5453**
Chula Vista, CA 91912

A C C U S A T I O N

15 **Professional Fiduciary License No. PF 315**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Julia Ansel (Complainant) brings this Accusation solely in her official capacity as the
21 Bureau Chief of the Professional Fiduciaries Bureau, Department of Consumer Affairs.

22 2. On or about February 17, 2009, the Professional Fiduciaries Bureau issued
23 Professional Fiduciary License Number PF 315 to Gary Lee Arps (Respondent). The Professional
24 Fiduciary License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on August 31, 2015, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director), for the Professional Fiduciaries Bureau (Bureau), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 6580 of the Code provides, in pertinent part, that the Bureau may investigate any professional fiduciary for alleged violations of statutes, regulations, or the Professional Fiduciaries Code of Ethics, including a person with a license that is retired, inactive, canceled, or suspended, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

STATUTORY PROVISIONS

5. Section 22 of the Code states:

"Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the

1 circumstances surrounding the commission of the crime in order to fix the degree of
2 discipline or to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 6584 of the Code states:

6 A license issued under this chapter may be suspended, revoked, denied, or other
7 disciplinary action may be imposed for one or more of the following causes:

8 (a) Conviction of any felony or any misdemeanor, if the misdemeanor is
9 substantially related to the functions and duties of a professional fiduciary. The record of
conviction, or a certified copy thereof, is conclusive evidence of the conviction.

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11 REGULATORY PROVISIONS

12 10. California Code of Regulations, title 16, section 4620 states:

13 For purposes of suspension or revocation of a license pursuant to Division 1.5
14 (commencing with Section 475) of the Business and Professions Code, a crime or act
shall be considered to be substantially related to the qualifications, functions or duties of a
15 fiduciary if to a substantial degree it demonstrates present or potential unfitness of a
person holding a license to perform the functions authorized by the license in a manner
16 consistent with the public health, safety or welfare. Such crimes or acts shall include but
not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

17 11. California Code of Regulations, title 16, section 4622 states:

18 When considering the suspension or revocation of a license under Section 480 or
19 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of
the licensee and his or her present eligibility for a license, shall consider the following
20 criteria:

21 (a) The nature and severity of the act(s) or crime(s) under consideration as grounds
for suspension or revocation.

22 ~~(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or~~
23 ~~crime(s) under consideration as grounds for suspension or revocation which also could be~~
24 ~~considered grounds for suspension or revocation under Section 6584 of the Business and~~
Professions Code.

25 (c) The time that has elapsed since commission of the act(s) or crime(s) referred to
in subdivision (a) or (b).

26 (d) The extent to which the licensee has complied with any terms of parole,
27 probation, restitution or any other sanctions lawfully imposed against the licensee.

28 (e) Evidence, if any, of rehabilitation submitted by the licensee.

1 COSTS

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 CAUSE FOR DISCIPLINE

9 (May 8, 2014 Criminal Conviction for Lewd Act Upon a Child)

10 13. Respondent has subjected his license to disciplinary action under sections 490 and
11 6584(a) of the Code in that he was convicted of a crime that is substantially related to the
12 qualifications, functions, or duties of a professional fiduciary. The circumstances are as follows:

13 a. On May 8, 2014, in a criminal proceeding entitled *People of the State of*
14 *California v. Gary Lee Arps*, in San Diego County Superior Court, case number CD248385,
15 Respondent was convicted on his plea of guilty to violating Penal Code section 288(c)(1), lewd act
16 upon a child 14 or 15 years old, a felony. In exchange for his plea, the court dismissed an
17 additional count of misdemeanor sexual battery (Pen. Code, § 243.4(e)(1)).

18 b. As a result of the conviction, on January 14, 2015, Respondent was
19 sentenced to serve 365 days in jail, suspended, pending successful completion of five years formal
20 probation. Respondent was ordered to pay fees, fines, and restitution, register as a sex offender
21 during the term of his probation, and comply with probation terms. A protective order was
22 reissued for the victim.

23 c. The facts that led to the conviction are that on or about May 10, 2013, a
24 14-year-old boy reported to the San Diego Police Department that Respondent, while working in
25 the capacity of a substitute teacher at a middle school, touched the minor's penis over his clothing.
26 Respondent subsequently admitted to the offense.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Professional Fiduciary License Number PF 315 issued to
5 Gary Lee Arps;

6 2. Ordering Gary Lee Arps to pay the Professional Fiduciaries Bureau the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
8 section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: March 23, 2015

Julia Ansel

JULIA ANSEL
Bureau Chief
Professional Fiduciaries Bureau
Department of Consumer Affairs
State of California
Complainant

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